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No. 74-1251

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

BORIS THOMAS, Individually and a member of a class
Petitioner,
v.
FORD MOTOR COMPANY, a Delaware corporation and International Union UAW, a union organization, and Local 600, UAW, a union organization,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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BRIEF OF RESPONDENT FORD MOTOR COMPANY IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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Question Restated

Whether this Court's Opinion in *Alexander* v. *Gardner-Denver Company,* 415 U.S. 36 (1974) precludes the grant of Summary Judgment in suits brought pursuant to Title VII of the 1964 Civil Rights Act, 42 USC §2000 (e) *et seq.* if such proceedings are otherwise justified by the record?

Statement of the Case

Petitioner filed two actions in the District Court, naming both respondents as defendants in both actions. The first suit, filed March 29, 1973, was an action brought under Section 301 of the Labor Management Relations Act of 1947, 29 USC §185. The second suit, filed May 17, 1973, was brought under Title VII of the Civil Rights Act of 1964, 42 USC §2000 (e) *et seq.;* 42 USC §§1981 and 1983; and the Equal Protection Clause of the Fourteenth Amendment. The actions were consolidated on June 6, 1973.

Respondents moved to dismiss the consolidated complaints pursuant to Rule 12 (b) (6) of the Federal Rules of Civil Procedure. Matters outside the pleadings were submitted in support of the motions. Thereafter, the trial judge informed the parties that, in accordance with Rule 12(b)(6), the motions would be treated as motions for summary judgment and disposed of as provided by Rule 56. After hearings on the motions and after having afforded all parties a reasonable opportunity to present all materials made pertinent by the decision to treat the 12(b)(6) motions as motions under Rule 56, the Court granted the motions and ordered the cases dismissed on November 7, 1973.

Upon appeal by Boris Thomas, the Court of Appeals affirmed the judgment of the District Court.

Reasons for Denying the Petition

The decision of the Court of Appeals is not in conflict with any decision of this Court or any other Court.

Petitioner argues that the decision of the Court of Appeals is in conflict with this Court's decision in *Alexander* v. *Gardner-Denver Company, supra.* It is not.

In *Gardner-Denver* this Court held that an employee's statutory right to trial *de novo* under Title VII of the Civil Rights Act of 1964 is not foreclosed by the prior submission of his claim to final arbitration under a nondiscrimination clause in a collective bargaining agreement. The Court did not say that in each instance of a claimed violation of Title VII that there must be a trial *de novo* and that the Federal Rules of Civil Procedure were abrogated to the extent of disallowing motions to dismiss or for summary judgment.

The Court of Appeals correctly determined that,

> Nowhere in *Gardner-Denver* did the Court hold or intimate that after an action for discrimination in employment is brought in a federal court the court may not dispose of the action by summary judgment if such proceedings are otherwise justified by the record. (Pet. App. 10-11.)

Both the District Court and the Court of Appeals correctly determined that summary judgment was appropriate in this case as there were no genuine issues as to any material fact and defendants were entitled to judgment as a matter of law.

CONCLUSION

The Petition for Certiorari should be denied.

Respectfully submitted,

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April, 1975